

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-705V

Filed: April 28, 2014

***** UNPUBLISHED
MELISSA RUSH and DENNIS PLACKO, *
natural parents of P.R.P., a minor, * Special Master
* Hamilton-Fieldman
*
Petitioners, * Petitioners' Motion to Dismiss Petition;
v. * Insufficient Proof of Causation; Vaccine Act
* Entitlement; Denial Without Hearing.
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *

Thomas P. Gallagher, Thomas Gallagher, Esquire, LLC, Somers Point, NJ, for Petitioners.
Lisa A. Watts, United States Department of Justice, Washington, DC, for Respondent.

DECISION¹

On October 15, 2010, Melissa Rush and Dennis Placko ("Petitioners") filed a petition on behalf of their child, P.R.P., for compensation under the National Vaccine Injury Compensation Program ("the Program"), 42 U.S.C. §300aa-10, *et seq.* (2006),² alleging that their child suffered from neurologic injuries as a result of receiving the diphtheria-tetanus-pertussis ("DTP") vaccination and influenza vaccination on November 17, 2007. Petition ("Pet.") at 1, ECF No. 1. The information in the record does not show entitlement to an award under the Program.

¹ The undersigned intends to post this unpublished decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107 347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." In the absence of such motion, the entire decision will be available to the public. *Id.*

² The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (2006).

On April 28, 2014, Petitioners moved for a decision dismissing their petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, Petitioners must prove either 1) that P.R.P. suffered a “Table Injury”-i.e., an injury falling within the Vaccine Injury Table- corresponding to one of P.R.P.’s vaccinations, or 2) that P.R.P. suffered an injury that was actually caused by a vaccine. *See* §§ 13 (a)(1)(A) and 11(c)(1). An examination of the record did not uncover any evidence that P.R.P. suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that P.R.P.’s alleged injury was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 13(a)(1). In this case, because there are insufficient medical records supporting Petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that Petitioners have failed to demonstrate either that P.R.P. suffered a “Table Injury” or that P.R.P.’s injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

/s/ Lisa D. Hamilton-Fieldman
Lisa D. Hamilton-Fieldman
Special Master